Supreme Court, U.S.
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No. 00-878

IN THE

Supreme Court of the United States

RICHARD L. MATHIAS, *et al.*,

Petitioners,

v.

WORLDCOM TECHNOLOGIES, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' ~~MOTION TO FILE POST-ARGUMENT BRIEF~~ AND POST-ARGUMENT BRIEF

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PETITIONERS' MOTION TO FILE POST-ARGUMENT BRIEF

Pursuant to Rule 25.6, Petitioners hereby move the Court for leave to file the attached post-argument brief. This brief addresses whether the Court should reach the merits of the questions presented in this case in light of the fact that the underlying judgment in the case affirmed the result reached by the Illinois Commerce Commission ("ICC"), of which Petitioners are the members. That issue was raised by the Court at oral argument in this case on December 5, 2001, and in an order issued on December 12, 2001, in the companion case of *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, Nos. 00-1531 and 00-1711 (consolidated). On January 7, 2002, the Court denied the motion of Respondent Illinois Bell Telephone Co., d/b/a/ Ameritech Illinois ("Ameritech"), for leave to file a post-argument brief and denied Petitioners' motion to file a response to Ameritech's brief, "without prejudice to filing a brief addressing only the jurisdictional question." Petitioners ask that the Court accept the attached brief on that issue.

POST-ARGUMENT BRIEF OF PETITIONERS

At oral argument, and in an order entered on December 12, 2001 in the companion case of *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, Nos. 00-1531 and 00-1711 (consolidated), the Court questioned whether it should reach the merits of the questions presented in this case in light of the fact that the lower courts had upheld the result reached by the ICC and entered no order against the ICC or Petitioners, its members. Petitioners believe that this Court can and should reach the questions presented in this case.

Although the position taken by the ICC on the underlying complaints was upheld below, its members have been required to defend its ruling in federal courts at every level, despite their claims of the absence of jurisdiction and constitutionally-grounded immunity. Throughout this litigation Petitioners have asserted their rights to be free from such federal court proceedings and from the entry against them of resulting judgments, whether favorable or not. Those claims implicate distinct but important interests of Petitioners, particularly as officials of a sovereign State. Policy considerations thus favor deciding these questions in this case despite the "favorable" outcome of the proceedings below.

While it is true that "[a] party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it," that principle is not a limitation grounded in Article III of the Constitution. *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 333 (1980). The Court has recognized that appellate courts have discretion to consider an appeal "from an adverse ruling collateral to the judgment on the merits at the behest of the party who

has prevailed on the merits, so long as that party retains a stake in the appeal satisfying the requirements of Art. III." *Id.* at 334; *see also Electrical Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241, 242 (1939). The Court has thus permitted appeals to proceed from favorable judgments where "policy considerations" supported hearing the appeal, as long as dismissal was not required under Article III. *Roper*, 445 U.S. at 335 and n.7.

This case presents legal and policy considerations that favor reaching the merits of the questions presented. In this case Petitioners have not sought "a review of findings [they] deem erroneous which are not necessary to support the decree," *Electrical Fittings*, 307 U.S. at 242; instead, they appealed rulings on jurisdiction and immunity upon which the district court's ability to enter judgment depended. Although that judgment was favorable to Petitioners on the merits of the ICC ruling, it did not grant the relief Petitioners sought in their motions to dismiss the action, the denials of which are the subject of this case. *See Forney v. Apfel*, 524 U.S. 266, 271 (1998) (district court order gave petitioner "only half a loaf. . . some, but not all, of the relief she requested; and she consequently can appeal the District Court's order insofar as it denies her the relief she has sought.").

In addition, because of the manner in which the district court proceeded in this case, Petitioners could not have posed the questions presented herein without the entry of a judgment on the merits. The district court essentially compelled Petitioners to litigate the merits of the underlying complaints over their objections to being in federal court by deciding to rule on the merits before it considered Petitioners' motions to dismiss based on jurisdiction and immunity. *See* Jt. App. 150a. This effectively required Petitioners to defend their ruling without a determination of jurisdiction and prevented them from pursuing any interlocutory appeal, at least on the immunity issues under *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993). Thus, as this case proceeded, it was impossible for Petitioners to obtain a ruling on the federal courts' power over them prior to that power being exercised in the issuance of a judgment on the merits. *Cf. Roper*, 445 U.S. at 335 n. 7 (appeal from favorable judgment should be permitted where both favorable and unfavorable rulings were presented due to district court's "procedural error" of considering both issues, *citing Electrical Fittings*).

Petitioners, as officials of an agency of a sovereign State, have a clear stake in this appeal, well satisfying Article III. While the merits of the case in the lower courts turned on whether the ICC properly construed the underlying interconnection agreements, the questions presented in this case involve entirely collateral but equally important issues of statutory federal court jurisdiction and sovereign immunity. Petitioners maintained below that their decisions should not have been reviewed in federal court at all and that neither they nor the ICC should have been subject to a federal suit brought by a private party. As state officials, Petitioners have distinct and separate interests in being free of the burden of defending themselves or their state agency from suits that have been brought by private parties in federal courts and that seek relief potentially in excess of those courts' jurisdiction, even in cases in which that defense is ultimately successful. The importance of maintaining the balance be-

tween federal and state interests, whether in consideration of questions of constitutional immunity or of the manner in which the Court reads a jurisdictional statute providing for review of state action in federal court, presents a significant policy consideration that supports reaching the merits in this case.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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